

STATE OF MICHIGAN
COURT OF APPEALS

CITY COUNCIL FOR CITY OF DETROIT,
ALONZO W. BATES, KENNETH V. COCKREL,
JR., SHEILA M. COCKREL, BARBARA-ROSE
COLLINS, KAY EVERETT, MARYANN
MAHAFFEY, SHARON MCPHAIL, and
ALBERTA TINSLEY-TALABI,

UNPUBLISHED
October 7, 2004

Plaintiffs-Appellants,

v

MAYOR OF DETROIT, KWAME KILPATRICK,
and CITY OF DETROIT ZOOLOGICAL
DIRECTOR,

No. 248724
Wayne Circuit Court
LC No. 03-303078-AW

Defendants-Appellees.

Before: Schuette, P.J. and Bandstra and Meter, JJ.

BANDSTRA, J. (*dissenting*).

I respectfully dissent.

Section 7-102 of the 1997 Detroit Charter first states that the mayor shall prepare an executive organization plan (EOP) setting forth all agencies of the executive branch and assigning programs, services, and activities to each agency. The existing EOP for the city of Detroit was apparently proposed by former Mayor Dennis Archer in 1994. There seems to be no contest that this EOP established a Consumer Affairs Department (CAD), consistent with the charter itself. § 7-601 to § 7-603. Further, the EOP assigned purposes to the CAD, roughly similar to those required by the charter itself. § 7-601. The EOP was apparently approved by the city council.

It seems quite clear from § 7-102 that any changes to the EOP had to be approved by the council as well. Specifically, the section allows the council to reject an EOP presented by the mayor with a two-thirds vote and specifically provides that “[a]ll amendments to the plan must originate with the mayor and are subject to the same procedure in taking effect.” § 7-102.

The majority opinion does not give import to that language but, instead, concentrates on a later paragraph of § 7-102 that prohibits the mayor from reassigning or combining functions of certain departments but allows such reassignments or combinations as to others, including the

functions of the CAD. In light of the above, my conclusion is that this paragraph merely specifies which of the charter-established functions of various departments may be reassigned or combined in fashions other than the charter establishes, and which ones may not. This is not to say, however, with respect to the functions that may be reassigned or combined in other ways, that the mayor may make such reassignments or combinations without presenting them as an amendment to the EOP for council review.

In fact, Mayor Kwame Kilpatrick presented the contested CAD alterations, in the form of amendments to the EOP, to the council for its approval in a letter dated May 15, 2002. Then, after the council rejected that request, Mayor Kilpatrick simply went ahead and made the alterations anyway, sending the council a “courtesy notice” that he was doing so.

This action was clearly contrary to the charter. The decision of the trial court should be reversed.

/s/ Richard A. Bandstra